

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to implement policies and procedures related to providing dedicated universal service support for wireless telecommunications services.

Application No. NUSF-69  
Progression Order No. 2

INITIAL COMMENTS OF UNITED TELEPHONE COMPANY  
OF THE WEST d/b/a EMBARQ

United Telephone Company of the West d/b/a Embarq ("Embarq") respectfully provides these comments in response to the issues set forth in the Commission's order in this docket, entered on July 24, 2007. The Commission seeks comments on a variety of issues related to establishing a dedicated Nebraska Universal Support fund ("NUSF") for wireless telecommunications carriers. Embarq appreciates the opportunity to provide comments in this important proceeding.

On October 18, 2005, the Commission decided that a dedicated NUSF fund for wireless telecommunications carriers should be established and that a separate docket would be initiated to determine the policies and procedures for this dedicated program.<sup>1</sup> On July 24, 2007, the Commission opened Application No. NUSF-69 to implement policies and procedures for the dedicated wireless NUSF program.<sup>2</sup> The Commission anticipates that the development of all of the issues for the dedicated wireless program will be handled through a series of requests for

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<sup>1</sup> *In the Matter of the Nebraska Public Service Commission, on its own motion, to investigate issues related to providing dedicated universal service support for wireless telecommunications services*, Application No. NUSF-48/PI104, Order issued October 18, 2005.

<sup>2</sup> *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to implement policies and procedures related to providing dedicated universal service support for wireless telecommunications services*, Application No. NUSF-69 Order Opening Docket, issued July 24, 2007.

comments and possible hearings.<sup>3</sup> Therefore the issues for which the Commission requests comments in this Progressive Order are not intended to be exhaustive. Embarq believes that the issues presented in this Progressive Order represent the initial building blocks for the dedicated wireless fund that the Commission must establish before it can proceed with more detailed decisions.

The Commission has provided little information regarding how the dedicated wireless program will be funded. Because this program will be part of the NUSF, Embarq assumes that the program will be funded through the NUSF surcharge that most Nebraska consumers pay. One option is that the Commission may divert funds from the wireline high-cost fund to the dedicated wireless program. This diversion should not be allowed to happen. Incumbent local exchange companies ("ILECs") have carrier of last resort ("COLR") obligations and are required to provide service to any customer in its service area that requests it, regardless of the cost involved. Wireless companies, however, can choose what areas of the state to serve. Therefore, under no circumstance should support for wireline companies be reduced in an effort to provide support for wireless carriers.

The alternative to diverting funds from the wireline high-cost fund is for the Commission to use new funding. Embarq is concerned that the addition of the dedicated wireless program will cause the NUSF surcharge to increase; it is important that the dedicated wireless fund be managed to control the burden on the Nebraska consumer.

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<sup>3</sup> *Id.*

A. Single Wireless Provider Network

The Commission first asks whether it should support a single wireless Nebraska Eligible Telecommunications Carrier ("NETC") in a given designation area. As noted in the Commission's request for comments, the Commission established a policy in NUSF-26 that provides support for a single network provider, unless an applicant can demonstrate that it is in the public interest for the Commission to support more than one network.<sup>4</sup> Embargo sees no reason to alter the Commission's policy for the dedicated wireless fund.

Supporting more than one wireless network could cause the size of the dedicated wireless fund to grow exponentially, as multiple wireless carriers request and receive NUSF funding, possibly resulting in increasingly larger NUSF surcharges that will be assessed on nearly all Nebraska consumers. This is already happening at the federal level. In many states there are multiple wireless carriers receiving Federal Universal Service funding ("FUSF") for the same serving area. For instance, in the state of Mississippi there are currently more than six different wireless carriers receiving FUSF support for the exact same study area. This practice of certifying more than one competitive eligible telecommunications carrier ("C-ETC") in a study area has led to a dramatic increase in the size of the FUSF and, correspondingly, an increase in the FUSF surcharge that all consumers pay. However, the impact of higher NUSF surcharges to pay for the dedicated wireless fund can be controlled if the fund is capped.

Even if the Commission believes that supporting more than one wireless network in a given designation area is plausible, increasing competition in rural areas is not necessarily in the

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<sup>4</sup> *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a long-term universal service funding mechanism*, Application No. NUSF-26, Findings and Conclusions issued November 3, 2004, paragraph 15.

public interest and should not be used as a basis for supporting multiple wireless networks.

This view is shared by the FCC. In the Virginia Cellular Order, the FCC wrote: "We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas."<sup>5</sup> Former Federal Communications Commission ("FCC") Commissioners Kevin Martin<sup>6</sup> and Kathleen Abernathy<sup>7</sup> have also commented that the policy of increasing competition in rural areas is not sufficiently in the public interest to certify additional competitive ETCs. Embarq believes that it would not be in the public interest to support more than one wireless network in each designated service area.

#### B. Reverse Auctions

The concept of reverse auctions, whereby "the bidder is specifying the amount of money it must receive to provide universal service in a given area for a given period of time"<sup>8</sup> has been around for some time. However, the concept of reverse auctions for the distribution of USF support has been receiving an increasing amount of interest lately. Certain parties believe that some form of reverse auction mechanism could slow the growth, or even reduce the size, of the FUSF.<sup>9</sup>

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<sup>5</sup> Memorandum Opinion and Order in CC Docket 96-45 ("Virginia Cellular Order"), released January 22, 2004, paragraph 4.

<sup>6</sup> *MAG Plan Second Report and Order*, Separate Statement of Commissioner Kevin J. Martin, 16 FCC Rcd 19613.

<sup>7</sup> Separate statement of FCC Commissioner Kathleen Abernathy, Memorandum Opinion and Order in CC Docket No. 96-45, released January 22, 2004.

<sup>8</sup> Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support, WC Docket No. 05-337, Public Notice issued August 11, 2006, page 1.

<sup>9</sup> Specifically, FCC Chairman Kevin Martin has expressed an interest in auctions.

Theoretically, reverse auctions could be used in one potentially useful way. They could be used to reduce duplicative support in areas where multiple carriers are receiving support for serving the same area. In Nebraska, duplicative support is not a problem for the NUSF dedicated wireless fund today. However, reverse auctions for wireless carriers could be viewed as one way of preventing the problem of duplicative support from ever emerging. Toward that end, reverse auctions for wireless carriers could be one way of arriving at the "single wireless network" to be supported that is described in the section above. In such a case, the auction would reduce the number of recipients of support.

However, the notion of possibly expanding the use of reverse auctions for wireline carriers is fraught with potential legal implications. As carriers-of-last-resort most wireline carriers are obligated by law to provide service, and there is a significant amount of uncertainty as to what exactly could or would happen to those obligations if an incumbent carrier, a COLR, were to "lose" an auction. Clearly the carrier could not be mandated to continue to provide service in an uneconomic area when it is denied the very funding it needs to provide that service because the funding has gone to another carrier that "won" the auction. Accordingly, at this point in time if the Commission has an interest in the concept of reverse auctions it should investigate that concept only as a means of limiting wireless recipients of support to a single wireless carrier in an area, since wireless carriers have no obligations to provide service.

#### C. Determination of High-Cost Areas

The Commission also requests comments on how to determine which areas are high-cost areas to be supported by the dedicated wireless program. As the Commission has already

determined high-cost areas eligible to receive NUSF support for wireline carriers, there is no need to reinvent the wheel by creating a second model for the dedicated wireless fund. The variables used to determine the high-cost areas for wireline carriers (principally population density) will be the same variables that will determine the high-cost areas for wireless carriers.

Given that high cost areas in Nebraska were determined in NUSF-26, the Commission's attention here should be to ensure wireless carriers receiving support provide service in the unserved and underserved areas of the state. The Commission has already shown that it desires to see wireless carriers use universal service funding to expand coverage in unserved and underserved areas.<sup>10</sup> However there is nothing in the rules that *require* wireless carriers to use USF dollars, either federal or state, to expand coverage into unserved or underserved high-cost areas. Therefore the Commission should require wireless carriers receiving support from the dedicated wireless NUSF fund to use those funds to expand service into the unserved and underserved parts of its designated service area. It is not in the public interest to provide NUSF support to a wireless provider knowing that that provider is under no obligation to use those support dollars to expand its coverage in unserved and underserved areas.

To ensure that wireless carriers receiving support from the dedicated wireless NUSF fund are using the support to expand their networks into unserved and underserved areas, these carriers should be required to file detailed reports showing the actual and planned use of

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<sup>10</sup> See *In the Matter of the Petition of N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless, Fort Morgan, Colorado, for designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2)*, Application No. C-3324, Order issued October 18, 2005; See also *In the Matter of the Application of Alltel Communications of Nebraska, Inc., for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934*, Application No. C-3497, Order issued March 7, 2006; see also *In the Matter of the Application of Untied States Cellular Corporation, Chicago, Illinois, seeking designation as an eligible telecommunications carrier pursuant to section 214(e)(2) of the Communications Act of 1934*, Application No. C-3725 (July 3, 2007).

the funds, similar to the reports wireline ETCs must provide as ordered in NUSF-25/NUSF-66.<sup>11</sup>

In addition, wireless carriers should provide a detailed report that shows the specific projects that will be completed with the NUSF support dollars and projects that would have been completed even in the absence of NUSF support. Through the information provided on this report, the Commission should ensure that the NUSF funding the wireless carrier receives is being utilized to expand service into unserved and underserved areas.

#### D. Determination of the Allocation of Support

The Commission poses several questions for commenters to consider regarding the allocation of support from the dedicated wireless fund. Those questions include the type of wireless technology to support, collocation, incentives, and roaming agreements. Embarq takes no position at this time on those issues and provides no comments or recommendations here; Embarq reserves the right, though, to comment on these issues at a later time. However,

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<sup>11</sup> On May 15, 2007, in Docket No. NUSF-25/NUSF-66, the Nebraska Public Service Commission ordered that "[b]y June 1 of each year, each eligible telecommunications carrier and Nebraska eligible telecommunications carrier shall file with the NTIPS Department an adequate description of how the high-cost funding support has been used. If an allocation of expenses is made for high-cost areas, then an explanation of the method used to determine the allocation must be included. Filings with the Commission must include the following:

- 1) One year of historical investment data, including any expenses, for the provision, maintenance, and upgrading of any facilities or services by exchange/wire center or by county. For June 1, 2007 filings, this information should be for calendar year 2006. If one year does not adequately encompass the applicable investment cycle, more than one year of historical information may be included.
- 2) For each historical year filed, the filing must separately describe both the Federal universal service funding and the Nebraska universal service funding received.
- 3) A one-year investment schedule, including any expenses, for provision, maintenance, and upgrading of facilities or services for the prospective year by exchange/wire center or by county. For June 1, 2007 filings, this information should be for calendar year 2008."

Embarq has several other issues regarding the allocation of support on which it would like to comment.

Before any support can be distributed, indeed before any allocation of support can be determined, the Commission must show a demonstration of cost. Simply put, the Commission must show that the wireless companies would be unable to profitably serve customers in the high-cost areas of the state without NUSF support. That demonstration can use actual costs as incurred by each wireless company, or it can use costs generated by a model, similar to what the Commission utilizes for the allocation of support for wireline NETCs. It is not in the public interest for the Commission to provide USF support to a wireless company that would have provided service for a profit anyway.

#### E. Other Issues

There are several other issues that the Commission should consider as it proceeds with the establishment of a dedicated wireless NUSF fund. First, in the name of competitive neutrality, the Commission must require all wireless carriers receiving support from the dedicated wireless fund to submit an annual NUSF-EARN form to demonstrate need, just as wireline NETCs currently are required to do. To do anything less would not be competitively neutral and would not benefit the customers. Similarly, the FUSF imputation for any federal USF support the wireless carrier may receive should be performed as part of the need test, just as it is performed for wireline NETCs. To allow wireless carriers to receive NUSF support without a demonstration of need in the same manner as wireline companies would not be competitively neutral.



F. Conclusion

The issues on which the Commission requests comments in this proceeding are the foundation upon which the dedicated wireless program will be built. It is essential that the Commission find the appropriate answers to these issues before it proceeds with implementing the dedicated wireless program. Embarq recommends that the Commission support a single wireless network in a given designated area as it would not be in the public interest to support multiple networks. Embarq believes that reverse auctions could theoretically be one way of determining and supporting a single wireless network in a designated service area. The Commission has already determined high-cost areas in NUSF-26 and there is no reason to designate different high-cost areas for wireless carriers. The Commission should require wireless carriers receiving support from the NUSF to use those funds to expand service in the unserved and underserved areas. Finally, the Commission must require wireless companies receiving support from the dedicated wireless program to annually submit an NUSF-EARN form, just as ILECs are required to do, demonstrating a need for funding.

Respectfully submitted this 20<sup>th</sup> day of September 2007.

By: \_\_\_\_\_  
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